

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.6939 of 2006

Date of Decision : 12.11.2007.

Teja Singh

.....Petitioner

versus

Smt.Amar Kaur and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.A.S.Sullar, Advocate for the petitioner.

Mr.P.S.Rana, Advocate for respondent Nos.1 to 3.

Mr.Vikas Chatrath, Advocate for respondent No.4.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The challenge in the present revision is to the order passed by the learned trial Court dated 6.11.2006 whereby the plaintiff-petitioner was called upon to affix the ad valorem Court fee on the amount of Rs.13,52,000/-.

The plaintiff-petitioner filed a suit for declaration challenging the power of attorney allegedly executed in favour of defendant No.1 on 16.10.1996; Gift Deed dated 10.1.2005 executed by defendant No.1 in favour of defendant Nos.2 & 3 and further mortgage of the land by defendant Nos.2 & 3 with defendant No.4. It was alleged that defendant No.1 is her real sister and she was allowed to cultivate the land owned and possessed by the plaintiff with the understanding that she will pay 1/3rd of the total produce as *batai* to him. But the defendant No.1, while abusing the trust deposited in her, executed a Gift Deed in favour of defendant Nos.2 & 3 and subsequently, defendant Nos.2 & 3 mortgaged the suit land. The said document came to be challenged in the present suit.

The defendant Nos.1 to 3 moved an application before the learned trial Court under Order 7 Rule 11 of the Code of Civil Procedure, for rejection of the plaint for not affixing the ad valorem Court fee. The said application was allowed by the learned trial Court holding that the plaintiff has delivered the possession to defendant No.1 for cultivation on 1/3rd *batai* and when the plaintiff is challenging the Sale Deed, Gift Deed and Power of Attorney, then the plaintiff has to determine the value of the suit as per the Article 1, Schedule 1 of the Court Fees Act, 1870 (hereinafter referred to as the Act). It was found that the plaintiff is out of possession and possession cannot be delivered him unless and until Gift Deed and mortgage are declared to be null and void and, therefore, the plaintiff is required to affix the ad valorem Court fee.

Learned counsel for the petitioner has vehemently argued that the challenge in the suit is for cancellation of the document and the plaintiff has not claimed relief of possession. It is contended that only if the possession is claimed as substantive or consequential relief, the plaintiff is required to affix the ad valorem Court fee under Article 1, Schedule 1 of the Act and not otherwise. It is further contended that in the suit for declaration the plaintiff has averred that the defendant No.1 would be deemed to be tenant and for possession, the plaintiff is to seek recourse to the proceedings applicable for eviction of the tenant from the agricultural land. It is also pointed out that the petitioner has in fact, initiated proceedings before the Revenue Authority for eviction of the defendants.

Learned counsel for the respondents has controverted the stand of the petitioner and asserted that since the plaintiff is out of possession, so

he is liable to affix the ad valorem Court fee at the value of the property given in the Gift Deed.

Having heard learned counsel for the parties at some length, I am of the opinion that the order passed by the learned trial Court suffers from patent illegality and irregularity. The plaintiff has not claimed possession as consequential or substantive relief. Article 1, Schedule 1 of the Courts Fees Act is applicable only if the possession is claimed either directly or indirectly as consequential relief, as is held by the Full Bench of this Court in a judgment reported as ***“1981 P.L.J.-423, Niranjana Kaur versus Nirbigan Kaur”***. Since the plaintiff has not claimed possession as consequential relief, the finding recorded by the learned trial Court that the ad valorem Court fee is required to be affixed, is wholly unsustainable. For the purpose of determination whether the ad valorem Court fee has to be affixed, one has to go through the averments made in the plaint and the averments made in the written statement are not required to be examined. On the reading of the averments made in the plaint, it is apparent that the plaintiff has not claimed possession and, therefore, it is simpliciter a suit for declaration on which the appropriate Court fee has been affixed. The question whether such suit is maintainable or not, is not required to be examined at this stage of affixation of the proper Court fees.

Consequently, the present revision petition is allowed. The order dated 6.11.2006 passed by the learned trial Court is set-aside as the same is suffering from patent illegality and irregularity causing substantial injustice to the plaintiff.

12-11-2007

**mohinder*

(HEMANT GUPTA)
JUDGE

